

The second invention (Group II), represented by claims 9 – 17, is drawn to a method of separating, classified in class 210, subclass 656.

The Examiner contends that Groups I and II are related as product and process of use and these two groups can be shown to be distinct if either or both of the following can be shown: 1) the process for using the product as claimed can be practiced with another materially different product or 2) the product as claimed can be used in a materially different process of using that product.

The Examiner argues that there would be a serious search and examination burden if restriction was not required.

Applicants make the following election with traverse. Applicants elect, for the purpose of the present prosecution, the inventions of Group II, claims 9 – 17, drawn to a method of separating.

However, reconsideration of the restriction requirement is respectfully requested. Applicants respectfully submit that the present inventions of Groups I and II are related to a single general invention concept for the following reasons:

The process disclosed in the present application is for separating enantiomeric analytes. Separating enantiomeric analytes by liquid chromatography can only be done by using a chiral-specific stationary phase or a chiral-specific mobile phase and can not be practiced with another materially different product. This is because paired enantiomers display virtually identical chemical properties and only chemical property can differentiate them is their chemical response to other chiral compounds. That is, two enantiomers show affinity differences in interacting with a same chiral compound. The process recited in claim 9 of Group II utilizes this chemical property and is carried out upon a chiral mobile phase recited in claim 1 of Group I.

Applicants respectfully submit that the invention is elegantly simple and maintaining all pending claims would expedite prosecution without imposing an undue burden on the Examiner.

The Examiner further states that the present application contains two distinct species: isocratic elution method and gradient elution method and that Applicants are required to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

The Examiner alleges that there would be an examination and search burden for these patentable distinct species due to their mutually exclusive characteristics.

Applicants make the following election with traverse. Applicants elect, for the purpose of the present prosecution, Group II, claim 17, drawn to a gradient elution method of separating.

However, reconsideration of this restriction requirement is respectfully requested. Applicants respectfully submit that the isocratic elution method and gradient elution method recited in the present application are not mutually exclusive as a gradient elution always comprises a series of isocratic steps. These two elution methods are employed in the process recited in claim 9 that is generic to Group II, as identified by the Examiner.

Applicants respectfully submit that the isocratic elution method and gradient elution method are known in the art as closely related methods and that examination and search for these two methods would not impose an undue burden on the Examiner.

Further, this election is made with the understanding that upon allowance of a generic claim, Applicants will be entitled to the consideration of additional species (an isocratic elution method) which is written in dependent form of an allowed generic claim.

Conclusion

Applicants respectfully submit that the present Application is in condition for allowance which action is earnestly solicited.

Customer No. 43840

Reg. No. 29,809

Respectfully submitted,

Anthony J. Janiuk
Attorney for Applicants

